



ORDINANCE NO. 07-014

AN ORDINANCE CONCERNING USES OF TOWN ROADS AND RIGHTS-OF-WAY, REGULATING EXCAVATIONS, ENCROACHMENTS, AND STRUCTURES WITHIN RIGHTS-OF-WAY, PROVIDING FOR PENALTIES FOR VIOLATIONS AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Brian Head Town has a limited number of Class B Roads, Class C and Class D public thoroughfares, and other public rights-of-way in the Town (collectively, "Town Rights-of-way"); and,

WHEREAS, such Town Rights-of-Way are difficult to acquire because of the difficulty in locating such rights-of-way in narrow mountain valleys within Brian Head Town where most of the population and arterial roadways are situated; and

WHEREAS, such existing Town Rights-of-way may be crowded by utilities that seek placement within the Town rights-of-way and such existing Town rights-of-way may be crowded to the point that vital public utilities cannot be located within those rights-of-way; and,

WHEREAS, Brian Head Town desires to establish a non-discriminatory policy for granting use of Town rights-of-way; and,

WHEREAS, it is in the best interests of Brian Head Town and the health, safety, and general welfare of its citizens to adopt this Ordinance:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF BRIAN HEAD, UTAH, COUNTY OF IRON, STATE OF UTAH, AS FOLLOWS:

Section 1. The Brian Head Town Roads and Rights-of-Way Regulations ("Regulations") is hereby adopted and incorporated herein by reference in its entirety as the standards applicable to the use, construction and improvements in, on or under Town roads and rights-of-way within the Town of Brian Head. All construction and improvements within the Town of Brian Head shall comply with such Regulations; and

Section 2. Effective Date. This Ordinance shall take effect upon its passage by a majority vote of the Brian Head Town Council and following notice and publication as required by law. Upon this Ordinance being adopted by the Brian Head Town Council of Iron County, Utah, all provisions of this Ordinance shall be incorporated into the Brian Head Town Code.

Section 3. Conflict. To the extent of any conflict between other Town, County, State, or Federal laws, ordinances or regulations and this Ordinance, the more restrictive is deemed to be controlling.

Adopted November 13, 2007

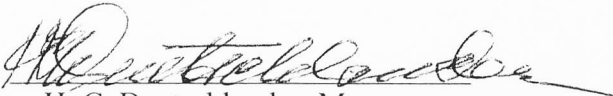
Section 4. Severability Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Repealer. All provisions of the Brian Head Town Code that are inconsistent with the expressed terms of this Ordinance shall be repealed

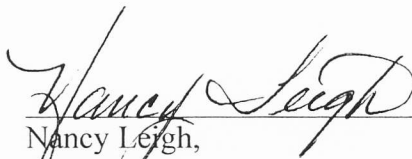
PASSED AND ADOPTED BY THE BRIAN HEAD TOWN COUNCIL OF IRON COUNTY, UTAH this 13th day of November, 2007, with the following vote.

Mayor H.C. Deutschlander	Aye
Councilperson Hans Schwob	Aye
Councilperson Ann Barton	Aye
Councilperson Stewart Fausett	Aye
Councilperson Kent Kroneman	Aye

BRIAN HEAD TOWN COUNCIL
IRON COUNTY, UTAH

By: 
H. C. Deutschlander, Mayor

ATTEST:


Nancy Leigh,
Town Clerk



Adopted November 13, 2007

BRIAN HEAD TOWN ROADS AND RIGHTS-OF-WAY REGULATIONS

Section 1. Permits Required for Excavations, Driveways, Encroachments, and structures

(a) It shall be unlawful for any person, firm, public utility or corporation to place, make, enlarge or change any excavation, driveway, encroachment or structure within the right-of-way of any Town road without complying with the provisions of these Regulations and obtaining a permit as provided for herein.

(b) It shall be unlawful, and punishable as provided for herein, to make any excavation or to place any encroachment or structure in any Town right-of-way not described in the approved permit application or which exceeds in size the dimensions or which does not conform to the conditions described in said application.

Section 2. Emergency Conditions

Emergency excavations and encroachments may be commenced without prior permit if the reason for the excavation or encroachment is to prevent loss of life or damage to property which appears to be imminent if the action is delayed by waiting to secure said permits. In such emergency situations, those making the excavation or encroachment MUST contact the Town Public Works Director's Office and/or the Town Engineer's at the earliest possible time, but in no case later than the first working day following the emergency work in order to secure a formal permit. None of the provisions of these specifications are waived for emergency situations except for the prior permit requirement.

Section 3. Winter Season

No permits for road excavations or other excavations within ten feet (10') of the edge of a Town road shall be issued during the winter season except in emergency situations. For the purposes of this Section, "winter season" begins October 15 each year and ends May 15 of the succeeding year.

Section 4. Applications

Applications for all permits shall be made by the person, firm, public utility or corporation actually doing the work. Applications for all permits shall be made to the Public Works Director's Office as provided and shall describe the excavation, encroachment, structure or driveway and shall have a drawing of the location of the intended excavation, encroachment, structure or driveway, the pertinent dimensions thereof, the purpose therefore, the person, firm, public utility, or corporation doing the actual work and the name of the person, firm, public utility, or corporation for whom or by which the work is being done and shall contain an agreement that the applicant will comply with all ordinances and laws of Brian Head Town and the State of Utah relating to the work to be done. A Traffic Control Plan, conforming to the Manual of Uniform Traffic Control Devices (MUTCD), shall be submitted with all applications which involve excavations within a Town road right-of-way. The application shall also provide for an agreement that the applicant shall indemnify the Town for any loss, liability, or damage that may result from or because of the making, placement, existence, or manner of guarding or constructing any such excavation, encroachment, structure, or driveway.

Section 5. Permits

All permits issued pursuant to these Regulations shall be valid for a period of 60 days from issuance, except that no permit shall extend into the winter season as outlined in Section 3. A copy of the permit issued shall be made available by the applicant at all times when work is under way.

Section 6. Fees

A review fee, in the current amount as identified in the Consolidated Fee Schedule, shall accompany each application for a permit unless other fee payment arrangements have been approved by the Town of Brian Head.

Section 7. Completion Bond

Applicants shall provide a completion bond to the Town of Brian Head in the amount as identified in the Consolidated Fee Schedule at the time the permit is approved. This may be cash, a letter of credit from an F.D.I.C. Insured Financial Institution, or a corporate surety bond. The bond shall be valid for a period of two years from the date of the construction inspection to guarantee that the condition of any permit together with any restorative works is completed properly (the "guarantee period"). The bond will be released upon recommendation of the Town Engineer and/or the Town Public Works Director.

Applicants for permits may secure a continual annual bond in lieu of separate bonds for each excavation. Applications for continual bonds shall be made before December 31st of each year and shall be valid for the next calendar year and be valid for a period of two years.

Those public entities which are regulated by the State of Utah Public Service Commission are exempt from the bonding requirements of this Section, but shall still be required to obtain a permit prior to making any excavation.

Section 8. Supervision and Inspection

The Public Works Director or his designee shall from time to time inspect, or cause to be inspected, all work done pursuant to permits to insure compliance with the provisions of these Regulations. Notification shall be given to the Public Works Director or his designee at least 24 hours prior to the commencement of any work. The Completion Bond shall not be released until an inspection shows compliance with all applicable provisions of these Regulations.

Driveway Encroachments require the following inspections to insure compliance with the standards set out in these Regulations:

1) Staking Inspection. A stake or marker shall be placed at each corner of the Encroachment as it intersects the road or street, and at each intersection of the driveway as it crosses the right-of-way or easement line. The front property corners shall also be set and marked with survey markers. This inspection is required prior to the Encroachment Permit being approved. The Public Works Director's Office must receive at least 24 hours notice prior to requested inspection.

2) Rough Grade Inspection. An inspection of the rough grade driveway is required prior to receiving a footing inspection by the Building Department. The driveway must be graded to a point that the inspector can determine compliance with these Regulations and the Land Management Code. The footing elevation/garage floor

elevation must be established prior to requesting an inspection. The Public Works Director's Office must receive at least 24 hours notice prior to requested inspections.

3) Pre-Surfacing Inspection. An inspection of the driveway is required prior to surfacing (soft or hard) the driveway to determine compliance with these Regulations and the development code. In no case can a Certificate of Occupancy be issued without the pre-surfacing inspection, and the driveway being in compliance with these Regulations and the Land Management Code.

Section 9. Failure to Comply

In the event of failure on the part of any person, firm, public utility, or corporation to comply fully with the provisions of these Regulations, law enforcement authorities and/or Public Works Director of Brian Head Town are authorized to:

- (1) Initiate action by citation or information under Section 10 herein and/or proceed to forfeit bond, or
- (2) Remove such encroachment, driveway or structure from the right-of-way or require such person, firm, or corporation to remove the same; or,
- (3) Give written notice to such person, firm, public utility, or corporation to remove such encroachment, driveway or structure from the right-of-way. Such notice may be served either by personal service or by mailing the notice to the person, firm, public utility, or corporation by registered mail and posting a copy thereof on such encroachment, driveway or structure for a period for 10 days. If such encroachment, driveway or structure is not removed within 10 days after the notice is complete, said authorities may remove the same at the expense of the person, firm, or corporation and recover costs and expenses, and also the sum of \$100.00 for each day the same remained within the right-of-way after notice was complete, in an action for that purpose;
- (4) If such person, firm, public utility, or corporation disputes or denies the existence of such encroachment, driveway or structure, or refuses to remove or permit its removal, said authorities may bring an action to abate the same as a nuisance, and if judgment is recovered by said authorities, there shall also be recovered, in addition to having the same abated, the costs of action and the sum of \$100.00 for every day such nuisance remained within the rights-of-way after notice was given for its removal in the manner provided in Subsection (2) of this Section; or
- (5) Revoke, suspend, terminate, impose conditions on, or modify, in whole or in part, any permit issued to such person, firm, public utility, or corporation.

Section 10. Penalty

Any person who violates the provisions of these Regulations is guilty of a class C misdemeanor and a one hundred dollar (\$100.00) fine per day. Each day of a continuing violation shall be deemed a separate offense.

Section 12. Specific Requirements

Specific engineering standards and requirements for the enforcement of these Regulations are attached.

EXCAVATION REQUIREMENTS AND SPECIFICATIONS

Section 1. Boring Preferred in Paved Rights-of-Way

Boring is the preferred method for crossing paved Town roads. Excavations shall not be approved unless it can be demonstrated to the Town Public Works Director that boring is infeasible or impractical as an alternative. The Public Works Director, or his designee, may allow excavation of a paved Town road which is in disrepair on a case by case basis.

Longitudinal excavations of paved Town roads shall not be approved unless it can be demonstrated to the Town Public Works Director that all other alternatives are infeasible or impractical. Approval will be on a case by case basis upon a recommendation of the Town Public Works Director or their designee.

Section 2. Minimum Depths for Buried Cables and Lines

All cables, conduits, or pipelines to be buried in Town rights-of-way for utility purposes shall be a minimum of 24" below final surface grade.

Section 3. Manner of Excavation

(1) General

The applicant shall perform all excavation of every description and of whatever substances encountered, to the depth specified on the plans and/or required to accomplish the work. During the excavation operations the material which might be found suitable for use in backfilling shall be piled in an orderly manner a sufficient distance from the banks of the trench for convenience in operating equipment, to avoid embankment overloading, and to prevent slides and cave-ins. All excavated materials not required or not suitable for backfilling shall be promptly removed from the site of the work and wasted in an area to be provided by the applicant with the approval of the inspector.

Grading shall be performed as may be necessary to prevent surface water from flowing into trenches or other excavations, and any water accumulated therein shall be promptly removed by pumping or by other approved method.

With the exception of snowcat groomers, the operation of steel tracked equipment, or the placement of steel outriggers/stabilizers in direct contact with the pavement surface shall be prohibited. The applicant shall take precautions to prevent damage to the pavement surface at all times. Any damage to the paved surfaces shall be repaired to the satisfaction of the Town Public Works Director, or his designee, at the applicant's expense.

(2) Safety

All excavated materials shall be piled in such a manner as will cause a minimum of inconvenience to public travel, and provisions shall be made for urgent traffic as necessary.

The applicant will be responsible for providing barricades at all excavation sites while open trenches are present. Barricades must be lighted if open trenches are left overnight. Free access shall be

provided to all fire hydrants, water valves and meters, and clearance shall be left to enable free flow of storm water in all gutters, conduits, and natural water courses. The applicant shall utilize appropriate traffic signs, markers, and procedures in all construction activities as defined on the approved traffic control plan and in the Federal "Manual of Uniform Traffic Control Devices".

(3) Methods

Excavations which are approved as open cuts shall conform to the back sloping requirements of OSHA. No more than 100 feet of trench may be open during daylight hours, and no more than 20 feet of trench may be open during nighttime hours.

Short sections of the trench may be tunneled under existing structures if the pipe or utility can be safely and properly installed in such tunneled sections. In those areas where the utility is to be installed under existing curbs and gutters and/or sidewalks, the applicant has the option whether to tunnel and use flowable fill to backfill or to cut and remove the curb, gutter, or sidewalk. In the latter case, the applicant shall, at their expense, replace the curb, gutter, or sidewalk to match the existing structure in line, grade, and type of construction.

Prior to trench excavation, any bituminous or concrete pavement to be removed shall be cut with a saw or pneumatic tool to provide a straight, neat construction line. Pavement removed during excavation shall be disposed of off site and not used in backfilling the trench.

Prior to placing the asphalt concrete mix patch, the existing pavement shall be a saw cut an additional 6" to 12" back from the edge of the excavated trench. Care shall be taken to remove the additional pavement without disturbing the existing untreated base course.

Exceptions to the methods of excavation shall be reviewed by the Town Public Works Director or his designee, on a case by case basis.

Section 4. Backfill

(1) Class A Backfill

This class of backfill shall be used in areas where open cut of a Town road is approved. The trench above the pipe zone or utility conduit shall be backfilled with a cementitious flowable fill, untreated base course, and asphaltic concrete mix as follows:

Flowable Fill - cement treated aggregate conforming to Section 845 of the Utah Department of Transportation Standard Specifications for Road and Bridge Construction shall be placed between the bottom of the trench and the untreated base course. A layer of compacted pipe zone backfill may be placed above the pipe if required by the pipe or other utility conduit manufacturer. The flowable fill shall be allowed to cure for a period of 24 to 48 hours prior to placing untreated base course. Provisions shall be made to allow for traffic to cross the trench at all times.

Untreated Base Course - A 3/4" or 1" (max) untreated crushed aggregate conforming to Section 301 of the Utah Department of Transportation Standard Specifications for Road and Bridge Construction shall be placed between the flowable fill and the asphalt concrete mix surface. The untreated base course shall be placed to the pre-existing depth, but to a maximum depth of 8 inches and a minimum depth of 5 inches. The material shall be within 2% of optimum moisture content and be compacted to a minimum of 96% of the material's maximum dry density as determined by AASHTO's T-180 Method D.

Asphalt Concrete Mix - A 3/4" (max) asphaltic concrete mix conforming to Section 402 of the Utah Department of Transportation Standard Specifications for Road and Bridge Construction shall be placed above the untreated base course. The asphalt concrete mix shall be replaced to the pre-existing depth, but not less than 4 inches. The material shall be compacted to 96% of it's

Marshall design. The surface shall be finished 1/2" to 1/4" higher than the existing road surface to account for future settlement

All compaction efforts shall be verified by a Certified Laboratory Technician and copies of the testing performed forwarded to the Town Public Works Director or his designee within 5 days of completion of the trench restoration. A minimum of two moisture/density tests will be required per lift of material placed.

If an open cut of a Town Road is permitted, and the Town Road has been sealed with an oil flush or chip-seal, restoration by the applicant shall include re-application of the existing surface seal within 30 days of completing the asphalt concrete mix patch.

Seal Coat Materials used shall be as follows:

- 1) Asphalt Seal Coat Material shall be LMCRS-2H.

Seal Coat Operations shall conform to Section 405 of the Utah Department of Transportation Standard Specifications for Road and Bridge Construction, 1992. Prior to placement of Seal Coat (if required) and prior to the final release of Bond (s), the seams of the pavement repair (patch) shall be crack sealed. Asphalt Crack Seal Materials used shall conform to UDOT's 402S special provision and specification.

Minor variations to the trench backfill requirements may be approved upon submittal and review by the Town Public Works Director or his designee.

(2) Class B Backfill

This class of backfill shall be used in areas where thorough compaction and immediate completion of the trench backfill is required (those areas excavated within 5 feet of the edge of pavement or back of curb). The trench above the pipe zone or utility conduit shall be backfilled with suitable and approved material placed in layers consistent with the type of compaction equipment to be used, but shall not exceed 18 inches. Each layer shall be sprinkled and thoroughly compacted by means of hand-operated or mechanically-operated tampers. Backfilling and compaction shall be done to the satisfaction of the inspector and shall be continued on each layer of backfill until a compaction of 95 percent of maximum dry is obtained as determined by AASHTO T-180 Method D. The final one foot of backfill is to be compacted to 96 percent of maximum dry density. The moisture content of the backfill shall be within 2% of optimum as determined by AASHTO T- 180 Method D.

All compaction efforts shall be verified by a Certified Laboratory Technician and copies of the testing performed forwarded to the Town Engineer within 5 days of completion of the trench restoration. A minimum of one moisture/density test will be required per lift per 200 feet of trench randomly selected.

(3) Class C Backfill

This class of backfill shall be a used with the approval for the inspector, in trenches in those areas where subsequent trench settlement must be held to a minimum (areas beyond 5 feet of the pavement or back of curb). Any subsequent settlement of the trench during the applicant's guarantee period shall be considered to be the result of improper Class C backfilling and shall be corrected at the applicant's expense.

Suitable backfill material shall be placed in the trench in layers consistent with the type of compaction equipment to be used, but shall not exceed 18 inches. Each layer shall be sprinkled and thoroughly compacted by means of a hand-operated or mechanically-operated tamper.

Minimum compaction of 92 percent of maximum dry density as determined by AASHTO T-180 Method D is required.

Top soil must be removed and replaced to existing depths and finished to pre--excavation contours.

In areas where lawn sod, shrubs, topsoil, fences and other items must be removed during the trench excavation and backfill operation, coordination with adjacent property owners on their subsequent replacement is required by the applicant.

Section 5. Restoring Surface

Restoration shall be commenced as soon as possible following excavation. Complete restoration shall be diligently pursued until complete. Unless specifically authorized by the Town Engineer and/or Public Works Director, restoration shall be complete within five working days of initial excavation of the total area impacted by the excavation.

STRUCTURE ENCROACHMENTS

Section 1. General

For reasons of safety and snow removal operations, no trees, tall shrubs, structures, retaining wall, wall, landscape berms, utility poles, utility boxes, fire hydrants or other obstacles (all to be referred to as structures) shall be placed in the right-of-way of a Town Road without the necessary permits. A property owner may, at their own risk, plant grass, flowers, and low shrubs in the Town right-of-way without a permit. Brian Head Town shall not be responsible for damage during normal maintenance activities to any landscaping or structures placed within the right-of-way.

In no case shall a non-yielding structure be placed closer than those distances shown in the following table:

Clear Zone Distances In feet from edge of driving lane

Posted Speed	ADT	FILL SLOPES (FT)			CUT SLOPES (CUT)		
		6:1 or flatter	5:1 to 4:1	3:1	3:1	4:1 to 5:1	6:1 or flatter
40 MPH or Less	Under 750	7-10	7-10	**	7-10	7-10	7-10
	750-1500	10-12	12-14	**	10-12	10-12	10-12
	1500-1600	12-14	12-16	**	12-14	12-14	12-14
	Over 6000	14-16	16-18	**	14-16	14-16	14-16
45-50 MPH	750-1500	12-14	16-20	**	10-12	12-14	14-16
	1500-6000	16-18	20-26	**	12-14	14-16	16-18
	Over 6000	18-20	24-28	**	14-16	18-20	20-22

** Structure shall be placed on the right-of-way line.

*ADT = Average Daily Traffic

All structures placed within the right-of-way of a Town Road shall be flagged by the property owner with a minimum of a six (6) foot pole with a red or black flag attached to the top during the winter season. The winter season shall be defined as October 15th to May 15th of the following year. In known areas of deep drifting, the height of the pole shall be extended to eight (8) feet.

Section 2. Structure Encroachment Permit Application Review

Structure encroachment permit applications must be accompanied by a drawing or sketch which shows the structure location, right-of-way lines and existing conditions and topography.

BLOCKAGE OF TOWN RIGHT-OF-WAY

Section 1. Temporary Facilities

No temporary facilities such as dumpsters, portable toilets, construction equipment, or construction materials shall be placed in the right-of-way of a Town Road.

Section 2. Parking

Vehicles shall not be parked on a Town road in such a manner as to obstruct the flow of traffic. Two-way traffic shall be maintained at all times unless prior arrangements are made with the Public Works Director in writing.

Section 3. Fences

Fences shall not be located within the Town's right-of-way.